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In the Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-814

CHRISTOPHER P. McCARTHY
Petitioner,

vs.

AMERICAN RED BALL TRANSIT CO., INC.
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE UNITED STATES

Christopher P. McCarthy
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Petitioner.

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Petitioner, Christopher P. McCarthy, respectfully prays that a writ of certiorari issue to review the judgment of the Supreme Court of the State of New Hampshire be granted.

OPINIONS BELOW

The opinion of the Supreme Court of the State of New Hampshire was entered on July 30, 1974, No. 6777, granting summary judgment for respondent and is attached to this Petition as Appendix A.

The opinion of the Superior Court of Hillsborough County, Manchester, New Hampshire was entered on June 15, 1972, No. 24547, by the Honorable J. Batchelder, Superior Court Judge, denying Respondent's motion for summary judgment, and on June 15, 1972 granted petitioner's motion for summary judgment and is attached to this Petition as Appendix B.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. Sec. 1257(3), concerning Federal Statutes of an Agency of the United States Government, the Interstate Commerce Com-

mission (9 C.F.R. Sec. 1322.1). A final judgment was rendered by a highest State Court concerning laws of the United States. Differing interpretations have been made in many States on this law and the Supreme Court of the United States should resolve this issue. The judgment sought to be reviewed was made by the New Hampshire State Supreme Court on July 30, 1974, No. 6777. On October 28, 1974, Mr. Justice Brennan, Circuit Justice for New Hampshire entered an order, No. A-338, granting an extension of time in which to file petition for writ of certiorari up to and including December 27, 1974.

STATUTES INVOLVED

28 U.S.C. Sec. 1257(3). Concerning regulations of a Federal Agency of the United States Government.

QUESTIONS PRESENTED

In particular, the questions presented for review by the United States Supreme Court are:

1. Whether the Supreme Court of the State of New Hampshire erred in holding that the petitioner, Christopher P. McCarthy, was liable simply because he accepted his household goods as consignee while not taking into consideration a forgery; a violation of the Rules and Regulations of a Federal Agency of the United States Government, the Interstate Commerce Commission; equal protection for all individuals under the Constitution; and finally not taking into consideration high court decisions of other courts in the United States who ruled contrary to the decision of the Supreme Court of New Hampshire.

STATEMENT OF THE CASE

The following facts are undisputed. Prior to June 17, 1969, petitioner, Christopher P. McCarthy, resided in Lake Forest, Illinois, and was employed by Randolph Manufacturing Company ("Randolph"). Randolph transferred petitioner to the New England area and agreed to pay his moving expenses from Lake Forest to his new home in Bedford, New Hampshire.

American Red Ball accepted a purchase order from Randolph on their credit and agreed to move petitioner's household goods. Prior to the movement of the goods from Lake Forest the operator of Red Ball's moving van presented to petitioner, Christopher P. McCarthy a bill of lading and freight bill which indicated under "Billing Information" that the charge was to be made to "Randolph". Red Ball's operator insisted that petitioner sign the bill of lading and explained the signature was required only to give the mover authority to take the goods and if stopped on the highway could prove he was not stealing the goods. Red Ball's operator, nor anyone else in the Red Ball organization, gave no indication to petitioner that by signing the bill of lading he was agreeing to be liable for the moving charges. During the unloading of the goods in Bedford, New Hampshire Red Ball's van operator requested petitioner to sign the bill of lading again to indicate that the goods were received in good condition. Petitioner agreed to sign provided that certain exceptions to the claim of "good condition" were noted. When this was done petitioner signed. At that time, neither the van operator nor anyone else in the Red Ball organization indicated to the petitioner that by signing he was agreeing to be liable for moving charges and did not call to petitioner's attention any part of the bill of lading which might have shown this statement.

On May 1, 1970 a certified letter was received by petitioner from L. W. Cherry, Accounts Manager, for American Red Ball Transit Co., Inc. stating in pertinent part "We fully realize that this knowledge of your legal obligation may come to you unexpectedly — One of the contract terms of the applicable tariff which is printed on the back of all shipping documents states in Section 3, in part: Shipper shall: (a) be liable for any and all charges applicable under carrier's tariffs, and pay therefor as provided in said tariffs. . . " This is a clear acknowledgment of the fact that American Red Ball Transit Co., Inc. did not indicate to petitioner this fact. This is clearly in violation of the ICC Regulations (9 C.F.R. Sec. 1322.1) and is a concealment of facts. This is also a violation of my

constitutional rights.

On August 6, 1970 petitioner was served a summons to appear at the Superior Court in Manchester, New Hampshire on the first Tuesday of September 1970. I engaged an attorney to represent me and the case was heard by the Honorable J. Batchelder, Judge of Superior Court, Manchester, New Hampshire, who denied motion for summary judgment for plaintiff and granted motion for summary judgment to Christopher P. McCarthy on the basis of the violation of the Regulations of the Interstate Commerce Commission (9 C.F.R. Sec. 1322.1). This order was entered on June 15, 1972, (Appendix B). Plaintiff appealed to the New Hampshire Supreme Court and in accordance with the appeal schedule, American Red Ball was required to pay $120 for the estimated expenses of transfer of the case to the Supreme Court on or before January 24, 1973. They failed to do this and on March 5, 1973, the Court entered an order dismissing the appeal and giving judgment to Christopher P. McCarthy. Thereafter however, plaintiff filed a motion to set aside the judgment and on April 6, 1973, the Court granted the plaintiff's motion and in effect reinstated the appeal. This I contend is a total disregard and violation of their own Regulations, which violates my rights under the Constitution.

The Supreme Court of the State of New Hampshire granted the motion for Summary Judgment to the Plaintiff on July 30, 1974 (Appendix A) on the basis of the brief of the Plaintiff which stated that I, as consignee, was liable for payment. Plaintiff also stated that their delay in billing Randolph increased the risk of non-payment but that there was no assurance that Randolph would have paid the shipment costs had it been billed earlier. The Chairman of the Board of Randolph, in a signed affidavit, stated that during July and August of 1969 Randolph was meeting its accounts payable.

On August 1, 1974, I received a letter from my then attorney giving me the decision of the New Hampshire Supreme Court and stating that the decision raised the possibility of an appeal

to the United States Supreme Court, but he had very little hope that the Court would even hear the appeal even though there might be merit to the appeal. He also said the costs would be prohibitive. Then on September 12, 1974 he recommended settlement on the amount of money I had placed in escrow. On October 2, 1974 my then attorney sent a check to the attorney for the plaintiff. On December 4, 1974 I called New Hampshire to obtain the necessary papers for my writ of certiorari and was then informed for the first time that my former attorney had agreed to a docket marking in the Superior Court of Manchester, New Hampshire stating no "further action". Up until this telephone call, my former attorney had written on every action that he needed my permission to act. He was wholly unauthorized to make any commitment which would disallow my rights under the Constitution to seek justice up to the Highest Court in our Land.

REASONS FOR GRANTING THE WRIT

1. The Supreme Court of the State of New Hampshire erred in not upholding the Rules and Regulations of a Federal Agency of the United States Government, The Interstate Commerce Commission, which state in pertinent part as follows:

> "Upon taking precautions deemed by them to be sufficient to assure payment of the tariff charges within the credit period herein specified, common carriers by motor vehicle may relinquish possession of freight in advance of the payment of the tariff charges thereon and may extend credit in the amount of such charges to those who undertake to pay them, such persons herein called shippers, for a period of 7 days excluding Saturdays, Sundays and legal holidays." (9 C.F.R. Sec. 1322.1)

Therefore, Red Ball illegally extended credit to Randolph for a period of at least 49 days beyond the 7 day credit extension allowed by the ICC Regulation. A most important point herein is that the ICC Regulations call the persons who undertake to pay tariff charges the "shippers". Randolph was the only person making this promise. Yet American Red Ball calls the petitioner

the shipper since he signed the bill of lading. If this is correct, and certainly the ICC Regulation says so, then the New Hampshire Supreme Court erred in ruling on me as consignee when the shipper of goods is the consignee. The bill of lading was forged in one place and in my experience as a business executive this voids the document. If so, American Red Ball did not have a legal document showing me as consignee.

2. The Supreme Court of the State of New Hampshire erred in not protecting my rights under the Constitution of the United States by not taking into consideration the fact of this forgery on the bill of lading.

3. The Supreme Court of the State of New Hampshire erred in rendering a decision in conflict with decisions opposite to theirs made in many high courts in other states. Laws should be equal for all. Therefore, this important Federal question should be decided by the United States Supreme Court.

The following are some cases in conflict:

Lyon Van Lines, Inc. vs. Cole
9 Wash. App. 382, 512 P.2d 1108

Consolidated Freightways Corp. of Del. vs. Admiral Corp.
442 F.2d 56, 62 (7th Cir. 1971)

Southern Pacific Transportation Co. vs. Campbell Soup Co.
455 F.2d 1219 (8th Cir. 1972)

CONCLUSION

For the reasons set forth above, petitioner respectfully requests that a writ of certorari be granted to review the questions present herein.

Dated, Grand Rapids, Michigan, December 17, 1974.

Respectfully submitted,

Christopher P. McCarthy,
Petitioner